

UGANDA / JUDGMENT

# Mukasa Vs National Resistance Movement & Anor (Miscellaneous Cause No. 069 of 2015)

## [2015] UGHCCD 162 (18 December 2015)

[2015] UGHCCD 162

## COURT

HC: Civil Division (Uganda)

## BEFORE

Namundi, J

## CASE / FILE NUMBER

Miscellaneous Cause No. 069 of 2015

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## THE REPUBLIC OF UGANDA

## IN THE HIGH COURT OF UGANDA AT JINJA

## MISCELLANEOUS CAUSE NO. 069 OF 2015

MUKASA IMMACULATE KABAALE:.....APPLICANT

## VERSUS

1. NATIONAL RESISTANCE MOVEMENT (NRM)

2. KIGONGO MATHIAS:.....RESPONDENTS

BEFORE: THE HON. JUSTICE GODFREY NAMUNDI

## RULING

This Application seeks prerogative reliefs that;

1. An order of Certiorari issues against the 1st Respondent quashing and declaring null and void the decision of the Electoral Commission of the 1st Respondent to front and/or name the 2nd Respondent as the 1st Respondent's Flag bearer for Chairperson Local Council V of Buikwe.
2. An order of Mandamus compelling the 1st Respondent's Electoral Commission to conduct a re-election for Local Council V of Buikwe District in accordance with the decision contained in its letter of 17/11/2015.

The Applicant raised grounds that;

1. The actions of the electoral Commission in fronting the 2nd Respondent as the 1st Respondent's Flag bearer were unfair.
2. That the actions of the Electoral Commission of the 1st Respondent were irrational and unreasonable.
3. The 1st Respondent's Electoral Commission acted in bad faith against the Applicant.
4. That the Electoral Commission of the 1st Respondent was biased against the Applicant.
5. That it is only fair and just in the circumstances that the orders sought be granted.

The affidavit in support deponed by the Applicant lays out the background leading to this Application.

Firstly that she was dissatisfied with the outcome of the elections conducted by the 1st Respondent's Electoral Commission and petitioned the said Commission. The said Commission considered her complaints and ordered a fresh election to be held on 19/11/2015. The above never took place and 2nd Respondent was declared Flag bearer for the 1st Respondent.

The 1st Respondent filed an affidavit in reply deponed by the Chairman of its Electoral Commission, Dr. Tanga Odoi. Therein he depones that the issue of sponsorship of candidates is the exclusive decision of the political party.

Further that this is a disguised Election Petition and that the nomination of the Applicant as an Independent candidate on 20/11/2015 removes the Applicant from the membership of the Respondent's Party.

Similarly, the 2nd Respondent filed an affidavit in reply whose contents are to the effect that he was never served with any written communication ordering a re-election. Instead, he was endorsed by the 1st Respondent as Flag bearer for LC. V Chairperson of Buikwe District on 19/11/2015 and duly nominated by the Independent Electoral Commission on 20/11/2015. The Applicant was also nominated as an independent candidate on the same day.

Finally that the Applicant has no locus standi in this matter having ceased to be a member of the 1st Respondent.

At the hearing of this application, Mr. Ssekaana for the 2nd Respondent raised several points of law which if resolved in his favour would determine this matter.

1. That the Applicant has no locus standi to bring this matter, having ceased to be a member of the 1st Respondent by virtue of having stood as an Independent candidate. That this offends the NRM code of conduct, Rule 4 (o) thereof. Reference was made to the case of **Julius Maganda Vrs. NRM – MA.154/2010**.

2. The procedure adopted by the Applicant is wrong. Complaints about elections in a political party are best addressed by other means – other than Judicial Review. He referred to the cases of **Simon Tendo Kagenge Vrs. ULS & Sebatindira** and **Prof. Ephraim Kamuntu Vrs. NRM & others – Election Petition 45/2012**.
3. The Application is moot and an abuse of Court process having been overtaken by events. The National nomination exercise is complete so there is nothing to quash.
4. The affidavit in support offends Section 6 of the Oaths Act as it does not state where it was deponed/Commissioned and this goes to the root of the matter.

Mr. Barata for 1st Respondent submitted that the Applicant picked Forms to stand as an Independent candidate on or before 12/11/2015 and hence the Application was brought to Court after the event.

**Mr. Julius Galisonga submitted in reply to the points of law as follows: -**

1. That the Applicant has not been subjected to due process by the party under Rule 5 thereof and hence has not ceased being a member thereof.
2. The Applicant has brought the Application on the legitimate expectation that her Petition would be handled by the first Respondent. Ref: **Schmidt & another Vrs. Secretary for Home Affairs (1969)2 Chancery 149**.

That Rule 4 of the Party Constitution code of conduct is in total violation of the right to hearing and natural justice. She tried to be heard and nothing happened.

1. That contrary to the case of **Kabenge (supra)** she is not challenging the election, but the decision that called for re-elections that never took place.
2. The Application is not moot as the effects of the 1st Respondent's decision are still standing as the 2nd Respondent is still standing as Flag bearer. Further that this cannot be handled as a Petition as it was a party internal matter. Further it was a prenomination matter within Section 139 of the Local Governments Act.
3. That the defects in an affidavit should be of the kind that is intended to deceive. The stamp of the Commissioner indicates the address of the said Commissioner for Oaths as being in Kampala.

The objections should be disregarded.

I have carefully considered the objections and submissions in support or against the said objections as well as the authorities cited. I make the following findings and decisions.

1. **Judicial Review Viz a Vis Election Process –**

First and foremost, I do agree that a party has a right to be heard by a Court of competent jurisdiction. However, the legitimate expectation of a party before a Court of law, is to have his/her matter speedily tried without unreasonable delay, and over causes of action rightly placed before the said Court. **Ref: Divorce Cause 10/2007 Fredrick Kato Vrs. Ann Njoki.**

Accordingly, a matter for Judicial Review must as of necessity fall within the ambit of the principles for Judicial Review.

Matters concerning elections should be tried within the regime of electoral laws that elaborately provide for various aspects of disputes arising from elections.

**1. Whether the Applicant has locus standi in this matter –**

The events in this matter reveal that even as the Applicant was attempting to be nominated as Flag bearer of the 1st Respondent, she also picked nomination Forms for nomination as an Independent candidate and by the time the re-election were scheduled to take place on 19/11/2015, she had effectively opted out of the jurisdiction of the NRM Party. Indeed on 20/11/2015, she was duly nominated as an Independent candidate by the Independent Electoral Commission.

She knowingly and deliberately flouted Rule 4 of the NRM code of conduct by her actions. She cannot turn around and claim she has not been subjected to due process by the NRM Party and is therefore still a member of the said Party.

She accordingly waived her rights to the said process. She walked out of the jurisdiction of the said Party. She cannot have her cake and eat it at the same time.

She accordingly has no locus to challenge the decisions of a Party to which she no longer belongs. I accordingly uphold the objections of Mr. Ssekaana and Mr. Barata. This alone would determine the Application without going into its merits. **Ref: Misc. Application No. 154/2010 – Julius Maganda Vrs. NRM.**

**1. Whether the Application is overtaken by events –**

Much as the Applicant insists she is only challenging the decisions of the NRM Elections Commission, it is a fact that the National Nomination exercise is complete. The actions the Applicant is challenging are pre-nomination processes that should be completed before the National exercise. Section 139 of the Local Governments Act was referred to. With due respect I have failed to appreciate its Application to the internal election process of a Party.

I find that this Application is overtaken by events and is academic. **Ref: Election Petition Application 45/2012 and Prof. E. Kamuntu Vrs. NRM Electoral Commission and others.**

**1. Defects in the affidavit in support –**

The affidavit in support was attacked the Respondents for lack of clear address/place of swearing the affidavit. It was submitted that it goes to the root of the matter and that the said affidavit renders the Notice of Motion without support.

I have looked at the authority cited by Mr. Ssekaana in this respect (**Julius Maganda (supra)**). It is not relevant to the circumstances of this Application. Instead, I find that on the authority of **Saggu Vrs. Roadmaster Cycles (U) Ltd (2002) EA 258** the defect was curable and hence the affidavit is admissible.

In conclusion, it is my finding that this Application is misconceived and misplaced for the reasons raised in the points of law. It is dismissed accordingly with costs.

**Godfrey Namundi**

**JUDGE**

**18/12/2015**

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